

Senate Bill 122

By: Senators Tolleson of the 20th, Williams of the 19th, Hooks of the 14th, Bulloch of the 11th, Golden of the 8th and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to local government public works bidding, so as to provide for local government contracts related to planning, financing, constructing, acquiring, operating, or maintaining certain water reservoirs, facilities, and systems; to amend Part 2 of Article 1 of Chapter 23 of Title 50 of the Official Code of Georgia Annotated, relating to the Water Supply Division of the Georgia Environmental Finance Authority, so as to provide for participation by the division in certain local water reservoir, facilities, and systems projects; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to local government public works bidding, is amended by adding a new article as follows:

"ARTICLE 4

36-91-100.

As used in this article, the term:

- (1) 'Affected local government' means any county, municipality, or consolidated government in which water storage facilities of a project are located or proposed to be located which will receive for local use water or services from such project or which, under a service delivery agreement entered into pursuant to Article 2 of Chapter 70 of Title 36, provides or is authorized to provide within an area water facilities or services similar to water facilities and services proposed to be provided by a project in such area.
- (2) 'Lead local authority' means the sole local governing authority or local authority participating in a project or the local governing authority or local authority designated pursuant to subsection (b) of Code Section 36-91-102.

(3) 'Local authority' means any local water authority created by Act of the General Assembly, any authority created pursuant to the provisions of Chapter 62 of Title 36, and any authority created by a county, municipality, or consolidated government which provides water, sewer, or waste-water treatment services.

(4) 'Local governing authority' means any county, municipality, or consolidated government.

(5) 'Project' has the meaning provided by paragraph (10) of Code Section 12-5-471 and includes environmental facilities as defined in subparagraph (B) of paragraph (5) of Code Section 50-23-4.

36-91-101.

(a) Local governing authorities and local authorities shall be authorized to enter into contracts provided for by this article with private persons, firms, associations, or corporations providing for or delegating the responsibility for procuring all permits, licenses, and permissions from the United States of America or any agency or instrumentality thereof; the State of Georgia, its departments, agencies, or authorities; or any county or municipality of this state as necessary or required for the purpose of constructing projects within this state, and to plan, finance, construct, acquire, operate, or maintain such projects or cause such projects to be planned, financed, constructed, acquired, operated, or maintained. Such contracts may provide for the reimbursement to the private person, firm, association, or corporation of costs and expenses associated with the execution thereof through service payments, user fees, purchase payments, and such other consideration as the local governing authority or local authority may deem appropriate. Such contracts may provide for the assumption by such local governing authority or local authority of such projects, permits, licenses, and permissions at such times as appropriate for the construction of the project or as otherwise agreed upon.

(b) A local governing authority or local authority may take any action to obtain federal, state, or local assistance for a project that serves the public purpose of this article and may enter into any contracts required to receive such assistance. A local governing authority or local authority may determine that it serves the public purpose of this article for all or any portion of the costs of a project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal, state, or local government or any instrumentality thereof. A local governing authority or local authority may agree to make grants or loans to the operator of a project from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

(c) Nothing in this article section shall be construed to delegate the power of eminent domain to any private entity with respect to any project commenced or proposed pursuant

61 to this article. Any local governing authority may exercise the power of eminent domain
62 in the manner provided by law for the purpose of acquiring any property or interests therein
63 to the extent that such action serves the public purpose of this article.

64 36-91-102.

65 (a) In addition to other methods of procurement authorized by law, local governing
66 authorities and local authorities shall be authorized to utilize the procedures of this article
67 to provide for the planning, finance, construction, acquisition, and maintenance of projects.
68 The provisions of this article shall be an alternative to such other methods to be exercised
69 at the option of each local governing authority or local authority.

70 (b) After identifying or being informed of any project that may be suitable for utilization
71 of the procedures of this article, one or more local governing authorities and local
72 authorities may participate in consideration and implementation of a project. Where more
73 than one local governing authority or local authority agrees to participate in consideration
74 or implementation of a project, the participants shall designate one of their number to be
75 the lead local authority for purposes of implementing the procedures of this article;
76 provided, however, that not less than one representative of each such participating local
77 governing authority or local authority, as agreed to by such local governing authorities or
78 local authorities, shall have the right to participate in all aspects of such implementation.

79 (c)(1) The lead local authority shall evaluate a project to determine, in the judgment of
80 the lead local authority, appropriate or desirable levels of state, local, and private
81 participation in financing, constructing, and operating such project. In making such
82 determinations, the lead local authority shall seek the advice and input of affected local
83 governments and is encouraged to seek the advice and input of the Water Division of the
84 Georgia Environmental Finance Authority, affected local governing authorities,
85 applicable planning organizations, and the private financial and construction sectors.

86 (2) The lead local authority shall be authorized to issue a written request for proposals
87 indicating the scope of the project, the proposed financial participations in the project,
88 and the factors that will be used in evaluating the proposals, and containing or
89 incorporating by reference other applicable contractual terms and conditions, including
90 any unique capabilities or qualifications that will be required of the contractor. Public
91 notice of such request for proposal shall be made at least 90 days prior to the date set for
92 receipt of proposals by posting the legal notice on the websites of each participating local
93 governing authority and local authority in substantially the same manner utilized by such
94 authority to solicit requests for proposals, with a copy of such notice provided
95 simultaneously to each affected local government.

(3) Upon receipt of a proposal or proposals responsive to the request for proposals, the lead local authority shall accept written public comment, solicited in the same manner as provided for notice of proposals, for a period of 30 days beginning at least ten days after the date set for receipt of proposals. In addition, the lead local authority shall hold at least one public hearing on such proposals within the jurisdiction of each participating local governing authority, participating local authority, or affected local government not later than the conclusion of the period for public comment.

(4)(A) The lead local authority, acting by and through a designated representative appointed for such purposes, and with the participation of any designated representatives of other participating local governing authorities or local authorities, shall engage in individual discussions with each respondent deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence and ability to meet the level of private financial participation called for by the local governing authority. Repetitive informal interviews shall be permissible. Any affected local governments shall receive ten days notice of any such individual discussions and interviews and may participate through an appointed representative. In the event that the Georgia Environmental Finance Authority or any other state authority or agency agrees to consider or participate in the project, a representative of such authority or agency appointed by such authority or agency may participate in such discussions and interviews.

(B) At the discussion stage, the representatives may discuss estimates of total project costs, including, but not limited to, life cycle costing and nonbinding estimates of price for services. Discussions conducted with respondents pursuant to this subparagraph shall not be public meetings subject to the provisions of Chapter 14 of Title 50. Proprietary information or trade secrets may be designated by a respondent as subject to one or more exemptions from public disclosure pursuant to the provisions of Code Section 50-18-72, but such designation shall not be binding on the participating local governing authorities, local authorities, and affected local governments unless consistent with applicable law.

(C)(i) At the conclusion of the discussion stage, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process, the designated representative, with the input of the representatives of any other participating entity and in an open and public meeting subject to the provisions of Chapter 14 of Title 50, shall select in the order of preference one or more respondents whose qualifications and proposed services are deemed most meritorious.

(ii) Negotiations shall then be conducted by the designated representative with the selected respondents. A representative of any participating local governing authority,

participating local authority, or affected local government shall have the right to notice of and participation in such negotiations. Negotiations conducted with selected respondents pursuant to this division shall not be public meetings subject to the provisions of Chapter 14 of Title 50.

(D) The designated representative shall select for approval by the lead local authority the respondent for project implementation based upon contract terms that are the most satisfactory and advantageous to the participating local governing authorities and local authorities based upon a thorough assessment of value and the ability of the final project's characteristics to meet the goals of the participating local governing authorities and local authorities, consistent with applicable state-wide and regional water plans and local comprehensive plans. Before making such selection, the designated representative shall consult in an open and public meeting subject to the provisions of Chapter 14 of Title 50 with the representatives of any participating local governing authority, participating local authority, and affected local government. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request for proposal, the lead local authority may award contracts to more than one respondent. Should the lead local authority determine in writing that only one respondent is fully qualified, or that one respondent is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that respondent.

(E) Upon approval of the selection by the lead local authority, a contract or contracts not exceeding 50 years in duration may be entered into with the selected respondents on behalf of all participating local governing authorities and local authorities, subject to approval by each such local governing authority and local authority and each affected local government.

(5) A request for proposals shall provide for the resolution of disputes over the award of a contract under this article by binding arbitration through the American Arbitration Association or otherwise, and such provision shall be binding on all respondents unless waived by the lead local authority in writing.

(6) Nothing in this article shall require the designated representatives, the lead local authority, or any local governing authority or local authority to continue negotiations or discussions arising out of any request for proposal.

(7) Every local governing authority and local authority shall be authorized to promulgate reasonable rules or regulations to assist in its evaluation of proposals and to implement the purposes of this article.

(d) No public officer, employee, or member of a local governing authority or local authority shall serve as an agent, lobbyist, or board member for any private entity directly

or indirectly under a contract or negotiating a contract provided for by this article for three years after leaving his or her position as a public officer, employee, or member of the local governing authority or local authority."

SECTION 2.

Part 2 of Article 1 of Chapter 23 of Title 50 of the Official Code of Georgia Annotated, relating to the Water Supply Division of the Georgia Environmental Finance Authority, is amended by adding a new Code Section as follows:

"50-23-28.2.

(a) Those definitions made applicable to Article 4 of Chapter 91 of Title 36 by Code Section 36-91-100 shall be applicable to this Code section.

(b) The division may evaluate any project to determine, in the judgment of the division, appropriate or desirable levels of state or private participation in such project. In identifying any such project and making such determination, the division shall seek the advice and input of the affected local governments and shall be authorized to seek and receive advice and input from local authorities and the private financial and construction sectors. The division may also propose projects to local governing authorities and local authorities as appropriate for the procedures of Article 4 of Chapter 91 of Title 36. The division shall be authorized to consult with local governing authorities and local authorities regarding its conclusions with respect to projects subject to this subsection.

(c) Local governing authorities and local authorities participating in the consideration of a project may, by mutual consent, request in writing that the division participate in the project in any capacity authorized by law. The participating local governments and local authorities may request in writing that the division serve as the lead local authority for such project, and if the division accedes to such request, the division shall assume all of the duties and responsibilities of the lead local authority pursuant to the provisions of Article 4 of Chapter 91 of Title 36, for itself and on behalf of such local governing authorities and local authorities, subject to the conditions and limitations of such article.

(d) In addition to the conditions and limitations of Article 4 of Chapter 91 of Title 36, the following shall be applicable to the division when acting pursuant to this Code section:

(1) Public notice of any request for proposals shall be made at least 90 days prior to the date set for receipt of proposals by posting a legal notice on the website of the Department of Administrative Services;

(2) The designated representative of the lead local authority, when the division is such lead local authority, shall be the director;

(3) No contract awarded under this subsection shall be operative until the governing authority of each participating local governing authority and local authority and each affected local government has approved the contract; and

(4) For any project for which participation or a lead local authority role is determined by the division to be feasible and appropriate, the division may perform management, technical, consultative, training, educational, and other project development and promotion activities, subject to availability of funds from the Georgia Reservoir Fund established by Code Section 50-23-28 or from other sources and the requirement that the fund be fully compensated by any private owner of the project for such expenditures.

(e) In discharging its duties and responsibilities under this Code section, the division:

(1) Shall to the maximum extent feasible expedite the issuance of the permits, licenses, and permissions from the United States of America or any agency or instrumentality thereof; the State of Georgia, its departments, agencies, or authorities; or any county, municipality, consolidated government, or local agency or authority of this state necessary and convenient for the purposes of this article;

(2) May enter into lease, use, or water supply agreements with the owner or operator of any project or water facility;

(3) May lease to an owner or operator of a project any state-owned facilities or property which the division is managing in connection with a project; and

(4) May enter into agreements with local governing authorities, local authorities, or an owner or operator or proposed operator of a project, setting fees to be paid to the division or the Department of Natural Resources for the purpose of enabling the division or the Department of Natural Resources to expedite or enhance the state or federal regulatory process.

(f) The director shall be authorized to delegate such duties and responsibilities under this Code section as he or she deems appropriate from time to time; provided, however, that the final approval of state projects and contracts provided for in this article shall be by action of the director.

(g) Nothing in this Code section shall be construed to delegate the power of eminent domain to any private entity with respect to any project commenced or proposed pursuant to this Code section. The state and any affected local government may exercise the power of eminent domain in the manner provided by law for the purpose of acquiring any property or interests therein to the extent that such action serves the public purpose of this Code section.

(h) All affected local governments which approve a project shall have agreed, by reason of such approval, to amend and to have amended, consistent with such approval, any

240 service delivery strategy agreement required by Article 2 of Chapter 70 of Title 36 to which
241 they are a party.
242 (i) No employee, officer, or member of the division, the authority, the Department of
243 Natural Resources, the Board of Natural Resources, the General Assembly, or any affected
244 local government or local authority shall serve as an employee, agent, lobbyist, or board
245 member for any private entity directly or indirectly under contract with or negotiating a
246 contract with the division under this article for three years after leaving his or her position
247 as such an employee, officer, or member."

248 **SECTION 3.**

249 All laws and parts of laws in conflict with this Act are repealed.